

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUAN A. ZABALA,

Plaintiff,

vs.

FRANK T. ROGERS, NOAH
STEWART, OKANOGAN
COUNTY, STEVEN M. CLEM, W.
GORDON EDGAR and
DOUGLAS COUNTY,

Defendants.

NO. 4:15-cv-05056-JLQ

ORDER DENYING MOTION FOR
RECONSIDERATION

BEFORE THE COURT is Plaintiff's Motion for Reconsideration, noted for hearing without oral argument on September 8, 2015, ECF No. 8. Plaintiff, a prisoner at the Washington State Penitentiary, is proceeding *pro se* and *in forma pauperis*; Defendants have not been served.

Because no final judgment has been entered in this case, the Court liberally construes the Motion as one for revision under Fed. R. Civ. P. 54(b). It was considered without oral argument on the date signed below.

By this Motion, Plaintiff challenges the Court's screening Order filed July 28, 2015, ECF NO. 7. Plaintiff contends that he is **not** asserting an access to court claim under *Lewis v. Casey*, 518 U.S. 343(1996). Rather, he claims that he has a state created due process right to a law library at a county jail as recognized by this Court in *Brown v. Manning*, 630 F. Supp. 391 (E.D. Wash. 1985).

ORDER DENYING MOTION FOR RECONSIDERATION -- 1

1 In *Brown*, this Court determined that *Bounds v. Smith*, 430 U.S. 817 (1977) applies
2 to local jails and that inmates confined for more than three days must be provided with
3 adequate law library or legal assistance. Unlike Plaintiff, the inmates in *Brown* asserted
4 interference with their ability to file writs of habeas corpus or civil rights complaints.
5 Furthermore, the portion of *Brown* finding a state created liberty interest has been
6 criticized for failing to distinguish between freedom interests and the day-to-day
7 administrative issues arising in the prison (or jail) context. See *Williams v. McClain* 708
8 F.Supp. 1086, 1088 n. 1(W.D. Mo. 1989).

9 Since *Brown*, the U.S. Supreme Court has recognized that “*Bounds* did not create
10 an abstract, freestanding right to a law library or legal assistance.” *Lewis v. Casey*, 518
11 U.S. 343, 351 (1996). Despite Plaintiff’s assertion to the contrary, his claims implicate a
12 right of access to the courts. Therefore, he must first establish that he has standing to sue
13 by alleging that the impediments at the county jail caused him to suffer some actual
14 injury. *Casey*, 518 U.S. at 351–55 . Because Plaintiff has not offered any facts showing
15 that the jail’s policies have caused him actual injury, he has not shown standing to bring
16 this claim.

17 Again, Plaintiff makes no assertion that he was denied access to a court appointed
18 attorney. See *United States v. Wilson*, 690 F.2d 1267, 1272 (9th Cir.1982) (the offer of
19 court-appointed counsel satisfies the constitutional obligation to provide meaningful
20 access to the courts, even where detainee is denied pretrial access to a law library); *Lewis*
21 *v. Casey*, 518 U.S. at 350-51(prisoners have no per se right to a law library). “[A]n
22 inmate cannot establish relevant actual injury simply by establishing that his prison’s law
23 library or legal assistance program is subpar in some theoretical sense. That would be the
24 precise analog of the healthy inmate claiming constitutional violation because of the
25 inadequacy of the prison infirmary.” *Lewis v. Casey*, 518 U.S. at 351.

26 Liberally construing Plaintiff’s submission, the Court finds no basis warranting
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1 reconsideration or revision of the Order directing Plaintiff to amend or voluntarily
2 dismiss. The Court is unpersuaded by Plaintiff's assertion that *Sandin v. Conner*, 515
3 U.S. 472 (1995) does not apply to his due process claim. See *Carlo v. City of Chino*,
4 105 F.3d 493, 498 n. 1 (9th Cir. 1997) ("*Mitchell v. Dupnik*, 75 F.3d 517, 524 (9th Cir.
5 1996)] holds that pretrial detainees' liberty interests arising directly out of the Constitution
6 are governed by *Bell v. Wolfish* [441 U.S. 520, 545 (1979)]. It further holds that in some
7 pretrial detainee cases *Sandin* will apply to determine whether a state law creates a liberty
8 interest protected by the Fourteenth Amendment).

9 There fore, **IT IS ORDERED** Plaintiff's Motion, ECF No. 8, is **DENIED**.
10 Plaintiff's deadline to amend or voluntarily dismiss his complaint was September 28,
11 2015. Plaintiff did not comply with this deadline. Because Plaintiff is proceeding *pro se*
12 and it is reasonable that Plaintiff was awaiting disposition of this Motion, **IT IS**
13 **ORDERED** the District Court Executive shall **EXTEND** the deadline to amend or
14 voluntarily dismiss until **October 28, 2015**.

15 **IT IS SO ORDERED.** The District Court Executive is directed to enter this Order
16 and forward a copy to Plaintiff. The District Court Executive shall terminate the motion
17 hearing and re-set the deadline to amend or voluntarily dismiss.

18 **DATED** this 1st day of October, 2015.

19 s/ Justin L. Quackenbush
20 JUSTIN L. QUACKENBUSH
21 SENIOR UNITED STATES DISTRICT JUDGE
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